IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Tulsi Dass vs. State of Rajasthan & Ors.
(S.B.C.Writ Petition No.4477/02)

Date of Order :- 16th October, 2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. K.C.Choudhary, Advocate, for the appellant.
Mr. Rameshwar Dave,Dy.Government Advocate for the State.

The petitioner in this writ petition has challenged the order dated 1.9.1998 whereby penalty of stoppage of one grade increment without cumulative effect was imposed upon him by the Collector and the order dated 3.7.2002 whereby his appeal against the said order of penalty was dismissed by the Divisional Commissioner, Ajmer .

A notice was served upon the petitioner under Rule 17 of the Rajasthan Civil Services(Classification &Control &

Appeal) Rules, 1958(in short "the Rules of 1958") on the charges that while he was working as Patwari of village Tarnau, he did not make correct entries in khasra Girdwari of Khasra No.1199 in regard to Samvat year 2052 while it was mentioned in the khasra Girdawari that the tenant had cultivated the field by borrowing water from his well existing in the filed whereas in fact the tenant had borrowed the water for irrigation of his crop from the well situated in the adjoining field. Kkhatedar of said khasra Shri Pancha Ram had started digging the well after sanction of loan from District Rural Development Authority, Nagaur(in short "D.R.D.A.") on 11.2.1997 which was proved from their letter dated 12.8.1997. The Disciplinary Authority found the charge proved against the petitioner and therefore imposed penalty of stoppage of one grade increment without cumulative effect which order was upheld by the Appellate Authority .

I have heard Mr.K.C.Choudhary, learned counsel for the petitioner and Mr.Rameshwar Dave, learned Dy. Government Advocate for the respondent and perused the

record.

Mr.K.C.Choudhary, learned counsel for the petitioner argued that the Disciplinary Authority has not correctly appreciated the khasra Girdawari of Samvat year 2052 regarding khasra no. 1199. Learned counsel for the petitioner has invited my attention to true copy of the khasra Girdawari placed in the writ petition on record and argued that there was no such entry in the khastra Girdawari so as to show that the khatedar had irrigated the crop from the water of the well situated on his adjoining field. Without there being any such entry, the disciplinary authority has passed his order mainly on the correspondence received from the D.R.D.A.,Nagaur and did not care to examine khasra Girdawari which was the basic document and foundation of the charge. The same mistake was again committed by the Appellate Authority when he upheld the order of penalty. A true copy of the khasra Girdawari has been placed on record. This khasra Girdawari has been atttested by none other than Tehsildar, Land Records , Jayal. The sole basis on which notice u/s 17 of the Rules of 1958 was served on the petitioner was with regard to the

alleged entry in the khasra Girdawari of khasra no. 1199. A perusal of khasra Girdawari does not prove the existence of any such entry which has been made foundation in the charge sheet of the petitioner.

On the other hand, Mr.Rameshwar Dave, learned Dy. Government Advocate argued that order of penalty has been passed by the disciplinary authority when charge against the petitioner was found proved. The evidence recorded by the Disciplinary Authority were based on first hand appreciation of the evidence including that of khasra Girdawari and the letter dated 12th August, 1997 received from the D.R.D.A., Nagaur. The D.R.D.A., Nagaur also got enquiry conducted and its enquiry report dated 19.6.1997 also provided corroboration to the findings recorded by the Disciplinary Authority. The Appellate Authority therefore has rightly rejected the appeal. It was argued that in the scope under Article 226 of the Constitution the matters relating to disciplinary proceedings may not be examined to test the sufficiency or adequacy of the evidenced. All that can be seen is whether the procedure

contained in Rules of 1958 has been followed or not. This Court cannot re-appreciate the evidence to arrive at a different conclusion than one recorded by the Disciplinary Authority. It was therefore prayed that the writ petition be dismissed.

In fact the disciplinary proceedings against the petitioner was initiated on the basis of enquiry report which was conducted by the Assistant Engineer of the D.R.D.A., Nagaur. In the enquiry report submitted to D.R.D.A., Nagaur it was mentioned that there was a recently dug well in khasra no. 1199. On the basis of the statements recorded, enquiry officer in that report found that even though the construction of the well was started in February, 1997 but it was not completed as yet. The application for construction of well was verified by Patwari and Tehsildar of Jayal in May, 1996. The preparation made by khatedar to dug the well itself were shown as existence of the well by the petitioner whereas in fact the khatedar had borrowed water from the adjoining field of Ramchandra for `Rabi' crop. It was therefore recommended that action be initiated against the Patwari as also the

Development Officer, Jayal for negligence on their government duty which in fact was meant to harass the farmers below poverty line.

The petitioner with his reply to the notice submitted on 15.11.1997 produced copy of khasra Girdawari of khasra no. 1199 relating to Samvat year 2052 and categorically pleaded that he did not make any such entry as has been made basis for issuing charge sheet to him. The disciplinary authority has omitted to give any finding on this argument although he has duly taken note of the argument while recording the contents of the petitioner's reply. The Appellate Authority also has fallen into the same illegality when it has solely and singularly based its order on the report submitted by the Assistant Engineer, D.R.D.A.,Nagaur. It has not been substantiated as to what was the motive which respondents wanted to prove against the petitioner for making alleged entry in the khasra Girdawari. But that apart, this could be proved only if the basic fact about the existence of such entry in the khasra Girdawari was itself proved to exist on record. In order

to satisfy about the correctness of the argument of the petitioner, the original register containing the relevant khasra Girdawari of Khasra No.1199 relating to Sanwat 2052 was summoned by the Court. A bare perusal of the khasra Girdawari shows that no such entry about existence of well is available there. Although such entry is found to have been entered in Girdawari of Sanwat 2052 to 2056. This therefore clearly proves that the Disciplinary Authority as also the Appellate Authority have not cared to examine the khasra Girdawari and have not given any finding as to if any such entry was ever made or existed on record. This was thus clearly a case of non application of mind.

In the result, the writ petition is allowed. The orders dated 1.9.1988 passed by the Collector, Nagauar and dated 3.7.2002 passed by the Divisional Commissioner, Ajmer are quashed and set aside. The petitioner shall be entitled to consequential benefits.

(MOHAMMAD RAFIQ),J.